CHE WAH v. MOHAMED YASSIN

[O. C. J. (Smith J.) October 17, 1956]

[Seremban — Miscellaneous Application No. 6 of 1956]

Married Women and Children (Maintenance) Ordinance, 1950, s. 3 — Courts Ordinance, 1948, s. 69(i) — Whether Magistrate has jurisdiction to make an order for maintenance of a child where there is dispute as to legitimacy of the child.

In this case the learned Magistrate applied to the Court for directions in connection with an application for maintenance of a child under section 3 of the Married Women and Children (Maintenance) Ordinance, 1950. The respondent denied that the child, for whom maintenance was claimed, was his. Section 69(i) of the Courts Ordinance, 1948 provides in effect that Magistrates' Courts have no jurisdiction in actions, suits or proceedings of a civil nature wherein the legitimacy of any person is in question. The learned Magistrate doubted whether he had jurisdiction to hear the application for maintenance since the legitimacy of the child was involved.

Held: the Married Women and Children (Maintenance) Ordinance, 1950 creates an exception from the operation of section 69(i) of the Courts Ordinance, 1948 and it confers on the Subordinate Courts such jurisdiction in relation to the legitimacy of a person as is necessary for the purpose of making orders under section 3 of that Ordinance.

Case referred to :—

(1) *R. Muthu Thambi v. K. Janagi* (1955) M.L.J. 47.

MISCELLANEOUS APPLICATION.

Smith J. : — This is an application under section 576(i) of the Civil Procedure Code, and arises out of an application to the Kuala Pilah Magistrate's Court for an order for the maintenance of a child under section 3 of the Married Women and Children (Maintenance) Ordinance, 1950 (hereinafter called 'the Maintenance Ordinance').

The facts of the case are : The applicant (the mother of the child) married the respondent on 5th August 1950 according to Muslim rites. The respondent divorced the applicant on 26th May 1951. A child was born to the applicant on 18th June 1951, i.e. some 23 days after the divorce. The respondent denies that the child is his.

Section 3 of the Maintenance Ordinance reads as follows :—

"3. (1) If any person neglects or refuses to maintain his wife or a legitimate child of his which is unable to maintain itself, a Court, upon due proof thereof, may order such person to make a monthly allowance for the maintenance of his wife or such child, in proportion to the means of such person, as to the Court seems reasonable.

(2) If any person neglects or refuses to maintain an illegitimate child of his which is unable to maintain itself, a Court, upon due proof thereof, may order such person to make such monthly allowance, not exceeding fifty dollars, as to the Court seems reasonable.

(3) Such allowance shall be payable from the date of such neglect or refusal or from such later date as may be specified in the order."

Section 69(i) of the Courts Ordinance (which applies to Magistrates' Courts by virtue of section 93(1)) reads as follows :—

"Sessions Courts shall have no jurisdiction in actions, suits, or proceedings of a civil nature —

(i) wherein the legitimacy of any person is in question; ....."

The Magistrate is doubtful whether he has jurisdiction in this case since the legitimacy of the child is involved.

The Magistrate has drawn my attention to the case of *R. Muthu Thambi v. K. Janagi*[1]. This case deals with section 69(k) of the Courts Ordinance and throws no light on paragraph (i) of that section.

The Maintenance Ordinance was passed after the Courts Ordinance. If effect is to be given to the later Ordinance it is necessary that the Subordinate Courts shall have sufficient jurisdiction to enable the Courts, once paternity has been established, to make an order either under sub-section (1) or sub-section (2) of section 3 of this Ordinance. In making any order under this section there is an implied finding with regard to legitimacy. The finding would be for the purposes of this Ordinance only and would not be in any way a declaratory decree.

There is contrariety between these two Ordinances. The Courts Ordinance is a general measure, the Maintenance Ordinance is a special measure. Where there is repugnancy between a general measure and a subsequent special measure the general rule of interpretation to be adopted is expressed as follows in *Craies* on Statute Law, 4th Edn. p. 318 :—

". . . . . if one statute enacts something in general terms, and afterwards another statute is passed on the same subject, which although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing by implication the former . . . ."

At page 319 the learned author says further :—

"If a subsequent statute merely creates an exemption or exception from the operation of a previous statute, or 'modifies its operation by the annexation of a condition', the previous statute is not necessarily held to be repealed . . . .".

Applying the principles here enunciated I am satisfied that the Maintenance Ordinance created an exception from the operation of section 69(i) of the Courts Ordinance and that the legislature intended and has conferred on the Subordinate Courts such jurisdiction in relation to the legitimacy of any person as is necessary for the purpose of making orders under section 3 of the Maintenance Ordinance.

I do therefore order the learned Magistrate to proceed with the hearing of the application.

Order accordingly.